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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

CARLTON S. DARGUSCH, *Petitioner,*

v.

COLUMBUS BAR ASSOCIATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Carlton S. Dargusch, prays that a writ of certiorari issue to review a final judgment of the Supreme Court of Ohio of December 2, 1964, imposing upon petitioner an indefinite suspension from the practice of law.

Opinions Below

The opinion of the Board of Commissioners of the Supreme Court of Ohio appears in Appendix A, *infra,* p. 20. The opinion of the Supreme Court of Ohio dated December 2, 1964, is reported at 177 O.S. 95 and appears in Appendix A, *infra,* p. 31.

Jurisdiction

The judgment of the Supreme Court of Ohio was entered on December 2, 1964, and a timely application for rehearing

was denied on December 23, 1964. On March 2, 1965, Mr. Justice Stewart signed an order extending the time for filing this petition to May 19, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Question Presented

Whether in state disbarment proceedings denial of confrontation by suppression of the identity of the informant-accuser is consistent with the due process of law guaranty of the Fourteenth Amendment to the United States Constitution.

Constitutional and Statutory Provisions Involved

The Fourteenth Amendment to the Constitution of the United States, provides in part that "No state shall . . . deprive any person of life, liberty, or property without due process of law . . ."

Rule XVIII of the Supreme Court of Ohio provides in part:

> "(10) HEARING BY PANEL OF THREE COMMISSIONERS. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. . . .
>
> "(13) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF PANEL. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recom-

mendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

"(14) REVIEW BY ENTIRE BOARD OF COMMISSIONERS; BOARD TO ADMINISTER PRIVATE REPRIMAND. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. . . .

"(15) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF BOARD AFTER REVIEW. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court. . . ."

"(16) SHOW CAUSE ORDER ISSUED BY THE COURT TO RESPONDENT. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of

said Board of Commissioners shall not be confirmed and a disciplinary order entered. . . ."

Statement of the Case

Petitioner, a member of the Ohio Bar with forty years of practice and many posts of public trust and honor, has been suspended from the practice of law by the Supreme Court of Ohio. The suspension is based on a finding of breach of responsibility by petitioner toward three trust beneficiaries. The beneficiaries themselves have made no accusation against petitioner and disclaim any dissatisfaction with his conduct, and the identity of the informant-accuser upon whose charges the Columbus Bar Association prosecuted this case was repeatedly withheld from petitioner during the disbarment hearing. *Review is sought on the question whether, consistent with the Fourteenth Amendment, the identity of the informant-accuser may be suppressed and confrontation denied in state disbarment proceedings.*

1. *The Pertinent Background*

Petitioner was admitted to the Bar in the State of Ohio in 1925 and soon became a tax attorney with the State Government. Having risen in the ranks to the position of Ohio Tax Commissioner and having served his state well for a number of years in public office, he resigned to undertake private law practice in 1937. One of his first accounts was an annual retainer as counsel for the Sunday Creek Coal Company. He commenced active military service in 1940 and remained in service until 1947, achieving the rank of Brigadier General and National Deputy Director of Selective Service. In 1951, after petitioner's return to private practice, he was asked to succeed the incumbent trustee of the living trusts (valued at three million dollars) of three sisters who were the beneficial owners of the stock

of the Sunday Creek Coal Company. Simultaneously petitioner was asked to become Chairman of the Board of Directors of Sunday Creek so that the Company could be managed in the direct interest of the three trust beneficiaries (Tr. 51-53, 458-462).

Petitioner was from the first given the same latitude as his predecessor in managing the Company. In obvious recognition of the inherently dual nature of petitioner's responsibility as trustee and also Chairman of Sunday Creek, the trust instrument provided that petitioner was to administer and invest the trust "without any restrictions to which fiduciaries are ordinarily subject, except the duty to act in good faith and with reasonable care" (Joint Exhibit C). The amount and nature of his compensation as Chairman of the Board of Sunday Creek were not stipulated in writing. It was understood that petitioner desired to draw his remuneration as Board Chairman not so much in salary but principally in corporate benefits, such as retirement, insurance, automobile expenses, and the like (Tr. 54-55, 469-470). The beneficiaries agreed (Tr. 54-55, 208, 214) that as Chairman of the Board of Sunday Creek petitioner could draw compensation (in addition to the retainer to petitioner's firm and his regular fees as trustee) not in excess of that of his predecessor —$20,000 per year plus corporate benefits. Between 1951 and 1959 petitioner served as Chairman of Sunday Creek, drawing average remuneration of about $12,000 per year—five thousand in cash and seven thousand in such benefits as retirement, insurance, automobile, and expenses (Tr. 553).

In 1959, Sunday Creek was faced with a serious cash problem, principally because of the long-established company policy of paying annually substantial liquidating dividends (Tr. 35, 433-437). As a result, the beneficiaries and the trustee differed as to the management of the assets, and

the trusts were revoked. Petitioner resigned as Chairman of Sunday Creek together with the other Directors, and one of the sisters took over its direct management (Tr. 221-224). A thorough independent examination was then conducted of petitioner's management of Sunday Creek and his remuneration from 1951 to 1959 (Tr. 220-221) on the basis of which private counsel for the trust beneficiaries advised them that petitioner had merely "made mistakes in judgment and for that no man is actionable" (Tr. 267). Nevertheless counsel urged the beneficiaries to make certain claims upon him for adjustments, and as a result of these claims and certain cross-claims by petitioner, a general settlement was entered into in 1959 wherein petitioner made a payment of $17,000 to the Company and received insurance policies in return in the value of $11,600 (Tr. 647, 665). Petitioner and the beneficiaries assumed that the matter was settled for all time.

2. *The Ethics Charges*

Three years later, in 1962, the matter was suddenly revived when some yet unidentified accuser presented charges alleging that petitioner's actions as Chairman of Sunday Creek between 1951 and 1959 had been unethical to the trust beneficiaries in numerous different respects (Tr. 282-283). After informal investigation by the Columbus Bar Association, in accordance with the rules of the Supreme Court of Ohio concerning discipline of lawyers, a formal complaint (*infra,* Appendix B) was filed and prosecuted by the Bar Association as "relator" before the Board of Commissioners of the Supreme Court of Ohio. That Court's Rule XVIII(8) provides that such a complaint may, but need not be, "signed by the person aggrieved". In this case no such signature accompanied

the complaint, nor is the name of the informant-accuser yet known to petitioner or to the Board of Commissioners which conducted the hearing and made the proposed findings in this case. At the hearing, the petitioner, one of the trust beneficiaries, and the hearing Board itself asked for the name of the informant-accuser who had charged breach of ethical responsibility by petitioner, but the Bar Association which investigated and prosecuted the charges saw fit to withhold it.

3. *The Hearing*

At the hearing before the Board of Commissioners in December, 1963 petitioner was tried on fourteen different "conflict of interest" charges of breach of ethics as Chairman of Sunday Creek between 1951 and 1959 (*infra,* Appendix B, p. 37) and was ultimately acquitted on all but three. The charges on which he was convicted (Nos. 1, 6 and 10, *infra,* pp. 37, 39, 41) allege that ethical duty to the beneficiaries was breached by petitioner's failure specifically to advise them in advance of certain of his "compensations": (1) the adoption by Sunday Creek's Board of Directors (duly reflected in the minutes) of a pension for the widow of any corporate officers who might die in office, (2) the receipt by petitioner's law firm of a $900 fee for drafting of the papers on a $70,000 loan from one of the three trusts to Sunday Creek, and (3) the reimbursement by the Company of about fifteen hundred dollars a year for petitioner's bills, representing chiefly business entertainment and travel expenditures.

The first witness called by the prosecution at the disbarment hearings ("as upon cross-examination") was the accused (Tr. 50). He admitted implementation by the Board of Directors under his Chairmanship of the widow's pension for company officers, the $900 fee charged by his firm for

drafting of loan papers, and Sunday Creek's reimbursement of his expenses; but he testified that such incidental payments and benefits were within his understanding with the beneficiaries and that no specific approval of such detailed disbursements and benefits was expected or required (Tr. 54-55, 469). (1) Concerning the widow's pension voted by the Board of Directors and duly reflected in its minutes, petitioner pointed out that it was applicable to all Sunday Creek officers and was usual in modern corporate practice (Tr. 394-396). (2) Concerning the $70,000 loan to Sunday Creek by one of the three trusts in a time of financial crisis, petitioner testified without contradiction that the $900 fee was for work actually performed, and paid with the beneficiary's knowledge and approval (Tr. 554-548, 192-199). (3) Concerning his expenses reimbursed by the Company, petitioner testified to the beneficiaries' approval of such non-cash benefits. He pointed out that with all of the corporate "fringe benefits" added to his cash salary as Chairman of Sunday Creek, his average annual receipts had been approximately $12,000—far below the $20,000 salary of his predecessor (Tr. 552-553, 575). And he stated that the beneficiaries were fully informed at the outset of his intention to draw remuneration principally through corporate benefits rather than cash salary (Tr. 54-55, 469, 489).

The only other material witness called by the prosecution was Mrs. Sexton, one of the three sisters and trust beneficiaries. She substantially corroborated the testimony of petitioner although recollecting fewer specific conversations concerning the method for his compensation. Mrs. Sexton testified that throughout the years 1951-1959 she had seen petitioner almost every week, principally concerning one of the other business properties in the trust (Tr. 218, 230), but that she left the management of Sunday Creek exclusively to petitioner, having no interest in its details in

any respect (Tr. 218, 229-231, 265).[1] She confirmed that at the commencement of his duties petitioner had indicated his interest in remuneration through benefits rather than cash, and that he would adhere to the compensation paid his predecessor (Tr. 208, 214). With respect to the basic allegations against petitioner, she *declined* to join therein or to assert any breach by him in the failure specifically to inform the beneficiaries of the compensation items alleged in the charges (Tr. 218, 229-231, 239, 266-270, 274).[2] Indeed, *none of the trust beneficiaries nor any other person* testified that petitioner's failure to give specific notice to the beneficiaries of the compensation items involved in the charges against him violated his understanding and arrangement with the trust beneficiaries.

The testimony of Mrs. Sexton concluded with a demand to know the name of the person accusing the petitioner. When asked by a member of the Board whether she had commenced the proceedings, Mrs. Sexton answered (Tr. 266):

> "I have nothing whatsoever to do with this proceedings, nor have any of my sisters, nor have anybody I know or with whom I have a contact. I don't know who instituted them. I cannot find out. I must say I

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[1] "General Dargusch did not discuss the administrative policy of Sunday Creek with me in any detail at any time. There was no reason why he should. He was a trustee. He was the Chairman of the Board, and he simply did not do it." (Tr. 218)

[2] Concerning the charge of conflict of interest by petitioner in his acts and remunerations as Chairman of Sunday Creek, on which he stands convicted, Mrs. Sexton testified (Tr. 271):

> "CHAIRMAN VOGELGESANG: Any conflict between his operation of the Sunday Creek Coal Company and the administration of the trust, your trust?
>
> "THE WITNESS: They were so hopelessly involved, there couldn't be a conflict in interest. It is like two drowning men having conflict of interest in the middle of the Atlantic Ocean on a life preserver. They are hanging on to each other."

am not very grateful to them. It seems to me a man is accused by someone who will not come out in the open and name himself. It is a strange way to work if I may make that statement.

"CHAIRMAN VOGELGESANG: Did I understand that nobody of your family have had any part of making the complaint here?

"THE WITNESS: None whatsoever. That is unequivocable, none whatsoever. I had no part. My sisters to my certain knowledge had no part in it unless they are certainly not telling me the truth.

"CHAIRMAN VOGELGESANG: Do you know where this proceeding was started?

"THE WITNESS: I haven't the slightest idea. If I knew the name of this witness who was responsible for them, I would darken even his Christmas eve."

The Chairman responded: *"The panel does want to know. We want to know why these proceedings were filed"* (Tr. 266). When the Chairman continued to press on this subject, the witness finally stated (Tr. 273):

"I have nothing to do with the charges. I didn't institute them. I don't know who did. I haven't the foggiest idea, not the foggiest. It seems to me strange that if what the General did was so terrible, it wasn't brought up in 1959. This is a layman's point of view, I grant you, and I submit it only as that. I don't understand any part of this. I am a witness in a matter that I can't find out who brought the matter.

"This is the first time I was called to testify about something I don't even know why I am here. It does seem if anybody wanted to complain about General

Dargusch about the Bar Association it would be somebody connected with the Sunday Creek Coal Company and it wasn't. I am not necessarily on the General's team, I am just on the team of fairness. I am not on anybody's team. I am on my family's team and Sunday Creek. In this particular instance, I can only say that somebody unknown to me is trying to 'get' the General to use today's jargon."

4. *Denial of Confrontation*

In view of the repeated questions raised about the identity of petitioner's accuser, the attorney for the prosecution stated immediately after Mrs. Sexton's testimony (Tr. 276) that "I think we had better clear the air here if you gentlemen have questions about how this matter arose . . .", and made reference to the receipt of the charges by the Columbus Bar Association in 1962 and their subsequent investigation. This, however, failed to satisfy the Board, whose Chairman remarked (Tr. 277) that "*Somebody starts the ball rolling. It must have started somewhere with the Bar Association.*" Thereupon, the attorney for the prosecution explained that the charges were originally transmitted to the Columbus Bar Association from the Secretary of the State Committee on Grievances, who had received them from the Chairman of that Committee, but he still did not identify the original informant-accuser (Tr. 282-283).

The remainder of the hearing added little to the evidence on the ultimate question whether petitioner had been unethical in his failure to make express disclosures to the trust beneficiaries of the compensations involved in the charges. It is noteworthy, however, that at the close of the prosecution's proof and over objection of the accused, the prosecution was permitted to amend the charge concerning the widow's pension voted by the Board of Directors, by

adding the allegation that it was "accomplished without the knowledge or consent of the beneficiaries" (Tr. 380-386). Moreover, on the same question of disclosure to beneficiaries, the Chairman of the Board subsequently announced that *"The burden would be on the Respondent to show that there had been disclosure as the Canon requires. If they don't have that in the record, that is for them to worry about"* (Tr. 626).

At the end of the hearing, with no witness having testified that the compensations charged against petitioner violated his understanding with the trust beneficiaries, and with the beneficiaries themselves disclaiming any conflict of interest or breach of duty by the accused, the identity of the real accuser had become a pertinent question, as reflected in the Board's own repeated desire to know who had instituted the charges. Accordingly, prior to the close of the hearing petitioner's counsel requested the Board (each member of which has power under Rule XVIII(31) "to issue subpoenas and to cause testimony to be taken under oath") to obtain disclosure of the accuser's identity, but the Board declined to grant it (Tr. 670-671):

> "MR. ADDISON: May we ask the panel make an investigation on its behalf as to the source of these charges? We feel as lawyers, as members of the public, that this panel—it is part of our job, too—we would like to know whether the panel is being used for some other purpose than for what it was intended.
>
> "Bear in mind, I am not making any criticism of the Bar Association, I was president just as these two men were. Charges were handed to them. We don't know where they came from. Mr. Isaac says they came from Mr. Schwer. Mr. Schwer, as I recall, was one of the Commissioners of the Board which naturally it would come from, but where it came from before that, we

don't know. We think the Board is entitled to know and so do [are] we.

"CHAIRMAN VOGELGESANG: I would suggest that if you have any such request that it be made to the Board by way of the secretary of the Board. We are here merely as a panel designated by—a panel of the Board to hear the particular charges involved, and we do not feel that we are warranted in speaking for the Board on the request that you have in mind.

"Beyond that, I don't think we can go. We have expressed our own curiosity, but actually there is a question whether we have a right to make it a matter of moment in this hearing. We are here to do the job that is presented to us by way of a complaint and the answer that has been filed and hear the evidence as you gentlemen have presented it to us. That is the extent of our duty. Beyond that, we can do nothing. We are willing to go if and when we are so instructed."

On July 7, 1964, the Board of Commissioners issued its findings and recommendation to the Supreme Court of Ohio. These acquitted petitioner on eleven counts but convicted him on the three compensations above set forth on the theory that in petitioner's failure to obtain specific beneficiary approval thereof he had committed a breach of faith to the beneficiaries (*infra*, Appendix A, p. 20). On these findings, the Board recommended that petitioner be publicly reprimanded. Thereafter on July 7, 1964, the Supreme Court of Ohio issued an Order to Show Cause why the proposed findings and recommendation should not be "confirmed and the disciplinary order entered." On September 29, 1964 the Court issued a new Order to Show Cause asking in addition whether in case of an affirmance, petitioner should be reprimanded, suspended or disbarred.

In resisting the Court's adoption of the proposed findings, petitioner urged at the outset that he was entitled to confrontation of his accuser, and that his constitutional rights would be violated were the Court to adopt findings based on a hearing wherein confrontation was denied. In his October 20, 1964 "Response to Order to Show Cause" (pp. 1, 24) petitioner urged that "To this day the Columbus Bar Association has not disclosed the complainant's name and thus Respondent has been denied the chance to subject his accuser to cross-examination. To say the least due process requires this"; and that "the beneficiaries of the trust involved state they have no complaint. The complaint was filed by a person whose identity the Columbus Bar Association refuses to disclose and therefore Respondent has been denied his constitutional right to cross examine his accuser." To that constitutional objection the Bar Association filed no response. On December 2, 1964, the Supreme Court of Ohio adopted the findings of fact proposed by its Board of Commissioners (with some minor variations), making no reference to petitioner's constitutional plea. The Court substituted an indefinite suspension of petitioner for the reprimand recommended by its own Board of Commissioners (*infra*, Appendix A, p. 31).[3]

Petitioner filed a timely motion for rehearing, urging anew that deprivation of confrontation was a "denial of due process of law in contravention of the Fourteenth Amendment . . ." and asking that the Court order a rehearing with confrontation afforded therein (pp. 1, 4). On December 23, 1964, rehearing was denied without opinion.

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[3] In some sixty disciplinary cases before the Supreme Court of Ohio since 1957, when it assumed jurisdiction of disbarment actions, the Court increased the recommended penalty in only two cases prior to this proceeding. In one case (D.D. 19; 172 Ohio St. 467) the Court made a finding of guilt beyond that of its Board of Commissioners, and in the other (D.D. 28; 173 Ohio St. 330) it increased the penalty based on respondent's prior history of misconduct.

On this record a variety of questions arise about the accusatory proceedings resulting in petitioner's suspension after a lifetime of unblemished legal practice: (i) the first witness called by the prosecution was the accused, (ii) at the close of the prosecution's case it was permitted to enlarge its charge on the corporate widow's pension, to allege petitioner's failure to give prior notice thereof, (iii) on that critical question of notice to beneficiaries the Board ruled that the accused bore the affirmative burden of proof, (iv) no accusing witness testified that the remunerations not specifically disclosed to the beneficiaries were required to be disclosed within the understanding between the parties and in fact the only testimony (by both the accused and the "injured" beneficiary) was to the contrary, and (v) the Court increased the recommended discipline from mere reprimand to indefinite suspension tantamount to disbarment. These circumstances independently present serious due process issues, but the clearest unfairness of all was the failure to identify petitioner's accuser and make him available for examination in the disbarment proceedings. That confrontation issue, especially in the context of a hearing lacking traditional protections afforded the defendant in accusatory proceedings, presents an important constitutional question for this Court's review.

REASON FOR GRANTING THE WRIT

Denial of Confrontation by Suppression of the Informant-Accuser's Identity in State Disbarment Proceedings Presents an Important Due Process Issue for this Court's Review.

i. Denial of confrontation in state disbarment proceeding presents a substantial constitutional question. Its appropriateness for this Court's review is indicated by the repeated grant of certiorari on closely related issues at

recent terms of court. See e.g. *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96; *Cafeteria Workers* v. *McElroy*, 367 U.S. 886; *Greene v. McElroy*, 360 U.S. 474; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; cf. *Pointer v. Texas*, 85 Sup. Ct. 1056; *Douglas* v. *Alabama*, 85 Sup. Ct. 1074. While this Court has not yet so held, it surely follows from its *Willner* decision, *supra*, that the due process right of confrontation applies to state disbarment proceedings—accusatory proceedings terminating, as here, with the penalty of loss of profession and livelihood. Cf. *Ex parte Garland*, 4 Wall. 333.

ii. Ohio has entrusted disbarment proceedings to Bar Associations rather than to the private injured or accusing parties and, as the facts in this case demonstrate, in such proceedings the State has provided the informant-accuser with the cloak of anonymity. Accordingly, at his trial for breach of ethics petitioner was denied the confrontation necessary to exposure of malice or fabrication by his accuser, although the importance of confrontation was underlined by the refusal of the putative "injured party" to support the charges and the consequent expressed desire of the trial board itself to know the identity of the accuser, which the prosecution nevertheless declined to reveal. Certainly, in such circumstances disclosure would be required under the federal rule announced by this Court in *Roviaro* v. *United States*, 353 U.S. 53, 60-61, that anonymity must give way when an informant-accuser's identity "*is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause . . .*" Due process compels a like result, for this Court has made clear that suppression by state authorities of evidence pertinent "*either to guilt or to punishment*" violates the Fourteenth Amendment (*Brady* v. *Maryland*, 373 U.S. 83, 87), and has recently incorporated the right of confrontation within that Amendment (*Douglas* v. *Alabama*, 85 Sup. Ct. 1074).

iii. Here the appearance of the informant-accuser as a witness was pertinent both to guilt and to punishment, and "essential to a fair determination" of the case. The informant was presumably a knowledgeable witness to the complicated matters involved in the charges, as the trial board itself apprehended in its inquiries about his identity.[4] Moreover, the trial board acquitted the accused on eleven charges and found him guilty only of *technical* breach on the remaining three—in his failure to disclose in advance rather than in his receipt as such of remunerations; thus a showing that the charges were born in the malice of an informant-accuser might well have induced the Board to choose a penalty less severe than public reprimand. In that event, under the applicable Ohio rule (*supra*, p. 3), the Supreme Court of Ohio would have had no jurisdiction to review the case and to increase the penalty, as it did, to suspension from practice.

iv. Moreover, the need to afford the fullest opportunity for defense to the accused in disbarment proceedings is underlined by the contrast with the procedural protections

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[4] In showing that a "fair determination" here required disclosure it should suffice to note that when the trust beneficiaries declined to support the charges against the accused, the trial board itself found the accuser's identity to be material and repeatedly expressed its desire to know it. In any event, as emphasized by the 9th Circuit opinion in *Burwell* v. *Teets*, 245 F. 2d 154, 165, n. 14, an accused denied access to a hostile witness cannot be required to show in advance what his examination would reveal—in that regard the Court properly quotes this Court's stricture in *Alford* v. *United States*, 282 U.S. 687, 692: "Counsel often cannot know in advance what pertinent facts may be elicited on cross-examination. For that reason it is necessarily exploratory; and the rule that the examiner must indicate the purpose of his inquiry does not, in general, apply. . . . It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop." Illustrations of evidence likely to benefit an accused from cross-examination of an informant-accuser are set forth in the concurring opinion of Chief Justice Warren in *Lopez* v. *United States*, 373 U.S. 427, 444, and the dissenting opinion of Justice Douglas in *Rugendorf* v. *United States*, 376 U.S. 528, 541.

of a criminal trial. While the penalty imposable in a disbarment proceeding is far more severe than that which applies to the ordinary criminal case, the burden of proof, presumption of innocence, and other accused-oriented criminal rules are unavailable. Thus, denial of confrontation does not stand alone here as a departure from due process. The hearing resulting in petitioner's disbarment was otherwise lacking in the traditional protections available in accusatory proceedings: the first witness called by the prosecution was the accused; the prosecution was permitted to amend its charge after the proof was in; the burden of proof was expressly placed upon the accused on the key question of notice to beneficiaries; and the court accepted the findings but increased the penalty recommended by the trial body.

v. Events in recent years have re-emphasized the importance of a responsible and independent bar to the maintenance of our democratic institutions. See Pollitt, *Counsel for the Unpopular Cause,* 43 N. C. L. Rev. 9. Human timidity under community and economic pressure has the inevitable tendency of reducing the effectiveness of the bar. Diluting the protections of the lawyer and increasing his risks of disbarment can only exacerbate this tendency. Yet the ruling in this case would impose on attorneys the risk of disciplinary proceeding invoked by anonymous accusers and lacking the most rudimentary safeguards for the accused. If attorneys may be tried on the instance of anonymous informants in proceedings where the accused can be called as the chief witness for the prosecution, be made to bear an affirmative burden of proof, and have the penalty recommended by the trial body increased by a reviewing authority, the vitally necessary independence of the bar may be seriously compromised. Thus, beyond the need to right a grievous procedural unfairness in the suspension of petitioner after forty

years of honorable practice of the law, this Court's review is required to define minimum due process protections under the Fourteenth Amendment for attorneys accused in state disbarment proceedings.

Conclusion

It is respectfully submitted that the writ should be granted.

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APPENDIX A—OPINIONS BELOW

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Case No. 89

IN RE: COMPLAINT AGAINST

CARLTON S. DARGUSCH, *Respondent*

COLUMBUS BAR ASSOCIATION, *Relator*

FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

This matter came on for the consideration of the Board of Commissioners on Grievances and Discipline on the report of the Hearing Panel, the transcript of the proceedings before the Panel and the exhibits. Upon consideration thereof the Board makes the following Findings of Fact and Recommendation.

FINDINGS OF FACT

The Respondent was admitted to the practice of law in 1925 and has a law office located at 218 East State Street, Columbus, Ohio. He is married and is 64 years of age.

During World War I, a corporation, The Sunday Creek Coal Company, was founded by John S. Jones of Granville, Ohio for the purpose of engaging in deep mining in Southern Ohio. Mr. Jones died in 1927 owning 90 percent of the stock of the corporation (with his key employees owning the balance), and owning the stock of The Granville Inn and Golf Course, Inc., as well as a 600 acre farm located between Granville and Newark, Ohio. In his Will he established a testamentary trust for his three daughters, Virginia Jones Olmsted, Sallie Jones Sexton and Frances Jones Lomas.

In 1942, the Jones testamentary trust terminated and the three beneficiaries received an approximate one-third

share each of the stock of The Sunday Creek Coal Company and of The Granville Inn and Golf Course, Inc., and Mrs. Sexton and Mrs. Olmsted each received approximately one-half of the Jones farm. Thereupon each of the three beneficiaries established a living trust with Chester C. Cook, then chairman of the Board of The Sunday Creek Coal Company and its Vice-President and Treasurer, acting as Trustee for each trust.

In the meantime, Respondent in 1937 resigned as Tax Commissioner for the State of Ohio to go into private practice and became counsel for a number of companies including The Sunday Creek Coal Company. In 1938 he became general counsel and director of the company. In 1940 he became a Vice-President. In 1951, just prior to the death of Chester C. Cook in September of that year, The Sunday Creek Coal Company paid Respondent an annual retainer in the amount of $10,000.00 which continued throughout the three trusteeships to which he succeeded upon the death of Chester C. Cook. At the same time he became chairman of the Board and thereafter took over control of The Sunday Creek Coal Company, voting the stock belonging to the beneficiaries in each of the three live trusts, while carrying on an extensive and lucrative law practice. This continued until he resigned his positions with the company in October 1959.

As a result of various controversies and differences that had arisen from various transactions over the years between Respondent on the one hand, and The Sunday Creek Coal Company and The Granville Inn and Golf Course, Inc., and his beneficiaries on the other, a written compromise agreement and adjustment of all of said controversies and differences was entered into among them in September of 1960. This was identified as Relator's Exhibit 40, offered into evidence by Relator, and objected to by Respondent.

Charge No. 1

Specification 1

While Respondent was in control of The Sunday Creek Coal Company, Respondent caused the company to pay his

club dues and bills in the amount of $5,762.07 of which a total of $4,292.89 was for travel and entertainment, liquor bills in the total amount of $2,634.13, and petty fund advances in the total amount of $1,000.00. Cash advances in the total amount of $2,570.00 were obtained by Respondent from the Columbus Club during the years of 1955 through 1959 and paid for by The Sunday Creek Coal Company. Substantially all of these amounts were for bills and expenses personal in nature and unrelated to the business of The Sunday Creek Coal Company, and were paid without the knowledge or express consent at the time of the beneficiaries of the three trusts.

By reason of the foregoing, the Board finds that Respondent was guilty of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio in that he has violated Canons 6, 11, 29, 32 and 38 of the Canons of Professional Ethics.

Specification 2

It was stipulated by and between the parties that The Sunday Creek Coal Company purchased a Cadillac in 1957, costing $11,748.00, for the use of Respondent. This was used by Respondent as his personal car on personal business, with expenses from time to time charged to and paid by The Sunday Creek Coal Company. In September, 1959 title to this automobile was transferred from the company to Respondent.

The Board finds, however, that the furnishing of an automobile to Respondent as an officer of the company followed the previous customary practice in the company, which was known to the beneficiaries and never objected to. Accordingly, the Board finds there has been a failure of proof of any misconduct as to this specification.

Specification 3

In 1952 an unfunded retirement plan was adopted by The Sunday Creek Coal Company. In 1954 the compensation to be paid under the plan was increased. In 1955 purchase of group life insurance was approved. In 1957 purchase

of major medical policies were authorized. In all of these actions, Respondent was qualified as a participant who would benefit by them, along with other employees of the company.

On December 5, 1955, Carlton Dargusch, Jr., son of Respondent, was employed as Assistant Secretary and Assistant General Counsel at a compensation of $1,000.00 per year. During the same time, Respondent continued to be employed as General Counsel of the Corporation at a retainer of $10,000.00 per year, with specific employment being entered into therefor pursuant to action of the Board of Directors for a period to end on December 31, 1958 and on another occasion by written contract for a period from April 1, 1957 to December 31, 1963.

By reason of the financial condition of the company existing during those years, there may be involved a serious question of judgment as to the precise programs approved, but no question is raised as to recognized corporate practice and purpose and the reasonableness of compensation to the son and the retainer fee. Furthermore reports were made available at all times to the beneficiaries covering all of these matters. Accordingly, the Board finds no evidence sustaining any charge of misconduct as to this specification.

Specification 4

On July 2, 1955, while Respondent was in charge and control of The Sunday Creek Coal Company, its Board of Directors approved the purchase of 1500 shares of stock from the C. C. Cook estate and 1000 shares of stock from a Mrs. Dukes, widow of a former employee of the company, at $20.00 per share. On January 7, 1957 the Directors approved an employee stock purchase plan whereby the same was to be sold to employees, including Respondent, at a price of $17.00 per share, the purchase price to be paid over a period of ten years and credit to be given for dividends paid. On October 6, 1958 the stock purchase plan was amended by the Board of Directors to permit a credit on the purchase price of stock of $1.00 per share per year, dividends at that time no longer being declared.

On April 6, 1959 the Board of Directors of The Sunday Creek Coal Company authorized the purchase of stock of Emma Newton Lowry and Gertrude Smith at $15.00 per share. This stock was then offered to employees, including Respondent, under an employee purchase plan, at $12.75 per share, with the $1.00 credit per year over a ten year period.

These stock purchase plans were designed as an incentive to the employees and for the purpose of enlisting and holding their loyalty. Beneficiaries of the trust were aware of these plans and made no objection. Accordingly, the Board finds that there is no evidence sustaining any charge of misconduct as to this specification.

Specification 5

Motion of Respondent to dismiss this specification was sustained, particularly when the evidence reflected that upon objection of one of the beneficiaries the contract complained of was not carried out.

Specification 6

On July 7, 1958 while Respondent was in charge and control of The Sunday Creek Coal Company, its Board of Directors authorized borrowing $70,000.00 from the Lomas trust and paying a $2500.00 finders fee to that trust for the loan. Respondent's firm (Respondent and son) was paid a $900.00 fee from the Lomas trust for legal services performed in connection with the loan. At the time the bank credit of the company had been cut off by the Huntington Bank and money was needed urgently to advance money to small producers on company property whose production the company had the exclusive right to sell. No claim is made as to the fee being unreasonable. Appraisals were secured and the collateral put up was ample security, with no question of prudence urged or default claimed or occurring. However, Mrs. Sexton at least had no knowledge of this transaction and accordingly the Board finds that Respondent was guilty of misconduct as defined in Section

5 of Rule XXVII of the Supreme Court of Ohio in that Respondent has violated Canon 6, 11, and 38 of the Canons of Professional Ethics.

Specification 7

The financial statements of The Sunday Creek Coal Company as introduced into the evidence reflect substantial operating losses and a deteriorating financial condition but reports of the financial condition were at all time available and furnished. The general financial condition of the company at least was known to all of the beneficiaries and always could have been ascertained in detail. Business judgment as to various measures taken may have been questionable, but no charge of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court is sustained by the evidence.

Specification 8

There was a failure of proof as to this specification and motion for dismissal as to it was sustained.

Specification 9

Respondent as trustee of the Lomas trust loaned $30,000.00 to his son, Carlton Dargusch, Jr., An independent appraisal was obtained of the real estate mortgaged and reflected ample security. No question is raised as to the rate of interest charged and paid. There were no defaults and the loan was paid in full in 1959. The evidence is undisputed that Respondent discussed this loan with Mrs. Lomas and secured her prior approval. While some question is suggested as to Respondent's judgment in loaning money as trustee to his son, the Board finds that there has been a failure of proof of any act of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio as to this specification.

Specification 10

Evidence is undisputed from the Minutes of The Sunday Creek Coal Company that on March 6, 1957 Respondent pre-

sided at the annual stockholders meeting of the company and voted the stock of the three trusts in favor of the resolution set forth in this specification. This action was not taken by express consent after full disclosure of the facts to the beneficiaries and would have benefited the widow or heirs of the Respondent. Accordingly, the Board finds that Respondent has been guilty of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio in that he has violated Canon 6 of the Canons of Professional Ethics.

Specification 11

During the years 1955 through 1958, Respondent as Trustee of the Lomas trust made over 20 separate loans to one Irvin Stein and Associates in total amounts exceeding $200,000.00. At the same time as Trustee of the Lomas trust, Respondent borrowed substantial sums during the same years from Huntington National Bank. The loans to Mr. Stein was partly from moneys derived from the moneys borrowed from the Huntington National Bank. Previously Respondent had represented Irvin Stein on a tax matter and in the acquisition of certain real estate and ceased to represent Stein in 1962 or 1963. Coincident with the loans to Irvin Stein and Associates in 1955, Naples (Florida) Companies desired to prepay their note to the Lomas trust at a discount. Respondent as Trustee of the Lomas trust permitted the Naples Companies to pay off its loan at a discount of $2,800.00. Stein then paid the Lomas trust the sum of $5,000.00 to cover the discount given to the Naples Companies and a fee of $2,200.00 charged by Respondent's law firm to the Lomas trust for services in handling the loan to Irvin Stein and Associates at that time.

The moneys borrowed from the Huntington National Bank were at an interest rate of 4 percent, the Naples Companies paid 5 percent and the moneys loaned to Stein and Associates were at interest rates varying from 6 percent to 7½ percent. Mrs. Lomas was advised of all of the details of the Stein loans and the loans were covered in the trust

reports. There is no charge or evidence that the fee of $2,200.00 was excessive.

In 1957 Respondent as Trustee of the Sexton trust made three short term loans to Irvin Stein and Associates. These loans were paid back in the same year and accounted for in trust reports. Respondent advised Mrs. Sexton of his relationship with Mr. Stein and the loans were covered in his trust reports to her.

No claim is made that any of the loans to Stein and Associates were made imprudently. Nor is there any question as to the authority of the Trustee to make investments to produce income in the various trusts.

The Board finds that there has been a failure of proof of any misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio as to this specification.

Specification 12

In 1954, Respondent as Trustee of the Loans trust loaned $100,000.00 to the T. Marzetti Company, for which company Respondent had performed miscellaneous legal services from about 1937. To secure this loan a first mortgage was given on real estate which had been appraised and in addition thereto the T. Marzetti Company put up additional collateral by pledging 1500 shares of stock in the City National Bank & Trust Company of Columbus. The loan has since been paid off and no fee was received by Respondent or his law firm in handling this transaction.

Respondent's wife's brother married Irene Marzetti years ago and at the time of the loan lived in Dallas, Texas. Approval of Mrs. Lomas was obtained by telephone and discussed with her personally. Disclosure was made of Respondent's representation of the Marzetti interests and the relationship with Irene Marzetti. No complaint was ever made by Mrs. Lomas and the same was accounted for in trust reports to Mrs. Lomas. Accordingly, the Board finds that there has been a failure of proof of any misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio as to this specification.

Specification 13

Respondent admittedly had discussions with Frank Smith, an officer of The Sunday Creek Coal Company as to the desirability of making some political contributions. The record discloses that Frank Smith, officer of the company, would turn in expense vouchers for cash which in turn was turned over to James A. Graham, Comptroller of The Sunday Creek Coal Company, with instructions from Mr. Smith to take the money to Respondent. This he did and Respondent then used the money for making political contributions. Respondent denies knowledge of how and why the money went from Smith to Graham to Respondent, or what the precise source of the money was. In any event, the specific charge is that the Respondent "caused certain officers of said company" "to turn over to him certain sums of money" "to use for political contributions." The evidence falls short of sustaining this particular charge, and accordingly the Board makes no finding of misconduct based on this specification.

Charge 11

Before charges were filed herein, Respondent and his counsel on December 27, 1962 conferred with Mr. Sol Morton Isaac and Mr. Jack Crites, constituting at that time the investigating subcommittee of the Professional Ethics Committee of the Columbus Bar Association. A transcript of a statement at that time taken from Respondent and his then counsel was offered in evidence and identified in this record as Relator's Exhibit 24.

This Board feels that Relator's Exhibit 24 is admissible in support of a charge based on violation of Canon 22 as to "candor and fairness" and no foundation of denial would be a prerequisite to its use. Respondent is a party to this proceeding. It is not a matter of impeachment, but rather substantive proof as to whether Respondent at the time was being candid and fair "with other lawyers"—members of the investigating subcommittee. Respondent was not asked any questions as to any part of the exhibit and the Board has no way of assessing what, if any, explanation or clarification Respondent might have made as

to any such. Suffice it to say, in examining the exhibit the Board does find some variations from testimony of Respondent in this proceeding. However, such variations are not of sufficient moment and probative value in the opinion of the Board so as to constitute sufficient proof of any violation of Canon 22 of the Canons of Professional Ethics.

Objection of Respondent to Relator's Exhibit 40 is sustained.

Respondent has had a varied and distinguished career. Prior to his admission to the Bar, he was employed as a legislative draftsman of the Ohio General Assembly. Following his admission to the Bar he was appointed Examiner in the Department of Taxation. In 1931 he became Chief Counsel of the Department of Taxation. Two years later he was appointed Tax Commissioner by the Governor of the State of Ohio and served until 1937 when he resigned to enter the private practice of law. In October of 1940, he was inducted into the Armed Forces and remained on active duty until 1947. He is a holder of the Army Distinguished Service Medal, the Army Commendation Medal with a Cluster, the Army's Award for exceptional civilian service, and is now a retired officer of the United States Army with the rank of Brigadier General.

He has served 22 years as trustee of Ohio State University and has the Ohio State University Distinguished Service Award. He has served as counsel and on the Board of many corporations and public institutions and organizations. Respondent is a recognized authority on manpower and has served the United States Government in many important capacities, here and abroad. He has written various publications and is rated "av" in the Martindale-Hubbell Law Directory.

The record further reflects considerable time elapsed before the filing of the charges herein and that none of the beneficiaries of the trusts which respondent served as trustee have had any part or interest in pressing the charges filed in this proceeding. It is evident that they had their complaints and criticisms of his management and actions, leading to termination of any further services of Respondent in 1959, but not with any ethical considerations

on their part in mind. However, this Board feels that it is its duty regardless to review the record thoroughly for any ethical misconduct involved regardless of the time elapsed and the interest of these beneficiaries, and regardless of what standing and career may have been achieved by Respondent. The discipline of the legal profession requires the same searching scrutiny, whatever be the station of the Respondent or the interest of those who may be most immediately affected by his conduct. This must be done, without fear or favor, and not be prejudiced by any lack of interest from any quarter.

Recommendation

From all of the foregoing, it is the recommendation of the Board that the Respondent, Carlton S. Dargusch, be publicly reprimanded.

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BEFORE THE SUPREME COURT OF OHIO

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COLUMBUS BAR ASSOCIATION,

v.

DARGUSCH.

• • • • • • •

(D. D. No. 62—Decided December 2, 1964.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Mr. John L. Davies, Jr., Mr. Sol Morton Isaac and *Mr. James C. Justice,* for relator.

Mr. Richard C. Addison and *Mr. John J. Chester,* for respondent.

Per Curiam. The relator, the Columbus Bar Association, filed a complaint against the respondent, Carlton S. Dargusch, Sr., containing 14 specifications of misconduct alleged to have been in violation of Canons 6, 11, 22, 29, 32 and 38 of the Canons of Professional Ethics. Except for specifications 1, 6 and 10, which will be discussed below, the Board of Commissioners on Grievances and Discipline found that the charges were not sustained by the evidence and recommended that the respondent be publicly reprimanded.

On September 29, 1964, this court issued an order to show cause why the findings of fact by the board of commissioners should not be adopted and, if they or any part of them were adopted, what disciplinary action should be taken. On November 5, 1964, the court heard arguments on behalf of the relator and the respondent.

The basic question raised in this proceeding is whether the respondent acted unprofessionally, while serving as trustee of three living trusts, by representing conflicting interests without a full disclosure of the same to the beneficiaries of the trust. The standards which a lawyer who

may represent conflicting interests must observe are found in Canons 6, 11 and 38, which provide in pertinent parts:

Canon 6. "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

Canon 11. "Money * * * or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances * * * be used by him."

Canon 38. "A lawyer should accept no compensation, commissions, rebates or other advantages from others without the knowledge and consent of his client after full disclosure."

The evidence shows that, in 1927, John S. Jones, of Granville, Ohio, died owning approximately 90 per cent of the stock of the Sunday Creek Coal Company (hereinafter called Sunday Creek), the stock of the Granville Inn and Golf Course, Inc. (hereinafter called Inn), as well as a 600-acre farm. In his will, he placed the foregoing property in a testamentary trust for his three daughters. In 1942, the testamentary trust terminated, and thereupon the three beneficiaries each established a living trust with Chester C. Cook, then chairman of the board of Sunday Creek and its vice-chairman and treasurer, as trustee for each trust.

Respondent's connection with Sunday Creek dates from 1938, when he became general counsel and director of the company, until October 1959, when he resigned from his positions with the company and the three trusts were revoked. In 1940, he became vice-president. In September 1951, following the death of Cook, respondent became trustee of each of the three living trusts and also became chairman of the board of Sunday Creek. At that time, while carrying on an extensive and lucrative law practice, he took over control of the company and voted the stock belonging to the beneficiaries of each of the three trusts.

Respondent, individually and through his law firm, served as general counsel for Sunday Creek from 1938 to 1959 at an annual retainer of $10,000. In 1954, a retainer contract covering legal services through December 31, 1958, was executed. A new retainer contract for legal services from April 1, 1957, to December 31, 1963, was executed in 1957. In March 1957, respondent's annual salary as chairman of the board of directors was increased from $5,000 to $7,500. Under the trust instruments, respondent was entitled to receive after September 1951 trustee fees equal to 7½ per cent of the gross annual income of the trusts.

As a result of various controversies that had arisen respecting transactions, occurring through the years, between the respondent on one hand and Sunday Creek, the Inn and the trust beneficiaries on the other hand, a written compromise was entered into among them in September 1960. Under the agreement, in addition to mutual releases, respondent paid $17,000 to Sunday Creek and sold and delivered to Sunday Creek and to the Inn all the stock of such corporations standing in his name or the name of his son, and the two policies of life insurance held by the pension trust of Sunday Creek on the life of respondent were assigned and delivered to him.

With respect to specification 1, the evidence shows that from time to time between 1951 and 1959 respondent caused Sunday Creek to pay his club dues and bills at the Columbus Country Club and the Columbus Club in the amount of $5,762. Sunday Creek also paid $4,292 for respondent's travel and entertainment and paid $2,634 for liquor bills incurred by respondent. Sunday Creek advanced to the respondent $1,000 from petty cash. He obtained from the Columbus Club during the years 1955 through 1959 cash advances in the amount of $2,570, which advances were paid by Sunday Creek. Substantially all these payments were for bills and expenses personal in nature and were not related to the business of Sunday Creek. There is no evidence that such sums paid to and on behalf of respondent were charged on the accounts of Sunday Creek as "salary" or "compensation" for the respondent. The corporate minutes of Sunday Creek failed to reveal any authorization

for any of the payments, and at least Mrs. Sexton, a beneficiary of one of the trusts, was not informed of such payments. The respondent himself failed to recall any notification to any of the beneficiaries of any of these payments on his behalf.

Relative to specification 6, the record shows that, in July 1958, the respondent, while serving as chairman of the board of Sunday Creek, trustee for each of the three trusts and attorney for Sunday Creek, arranged for a loan of $70,000 to Sunday Creek from the Lomas Trust. Respondent testified that, in order to secure the loan, it was necessary for Sunday Creek to pay the Lomas Trust a finders fee of $2,500. The law firm of which respondent was a senior partner received from the trust a $900 fee for legal work arising from such transaction. Appraisals were secured, and the collateral put up was ample security. No question of prudence is urged or default claimed. Mrs. Sexton, the beneficiary of one of the trusts, had no knowledge of this transaction. In a situation such as this, it is acknowledged that generally the borrower is the one who pays for legal services instead of the lender. At this time, respondent as general counsel for Sunday Creek was receiving an annual retainer of $10,000, under a contract with Sunday Creek executed in April 1957 to end in 1963, to handle the legal affairs of the corporation. Under the circumstances, it reasonably may be inferred that respondent, as trustee, paid a portion of the "finders fee" to himself.

Regarding specification 10, the evidence shows that, in March, 1957, at the annual shareholders meeting of Sunday Creek, at which respondent presided as chairman, a resolution was adopted which provided in pertinent part that "in the event of * * * the decease of any other present or future officer or employee who has been in the service of the company for a minimum period of twenty years (including military leave) the salary of such deceased officer or employee shall be continued by the payment of such salary to the widow or heirs for a period of twenty-four months following such decease." The respondent, as trustee, voted the stock in his control in favor of such resolution. Any payment made under the resolution to the respond-

ent's heirs or widow would have been a detriment to Sunday Creek, a detriment to the beneficiaries of the three trusts and, of course, a benefit to his heirs or widow. This action was not taken by the respondent with the express consent of the beneficiaries after a full disclosure of the facts. In fact, Mrs. Sexton, one of the beneficiaries, testified that "General Dargusch did not discuss the administrative policy of Sunday Creek with me in any detail at any time. There was no reason why he should. He was a trustee. He was the Chairman of the Board, and he simply did not do it."

Our careful review of the more than 600 pages of testimony and the approximately 100 exhibits in this proceeding has not been summarized in great detail. However, we believe that the foregoing digest adequately reviews the evidence particularly as it relates to specifications 1, 6 and 10. Since the conduct of respondent as charged and proved in these specifications is contrary to the professional standards quoted above and thus warrants disciplinary action, we find it unnecessary to expound on any doubts which we may entertain respecting other conduct of the respondent affecting his responsibility to the trusts with which he was charged.

A public reprimand as recommended by the board of commissioners is not commensurate with the gravity of the respondent's violations of the Canons of Professional Ethics. On many occasions, this court has imposed disbarment or suspension for an indefinite period on wayward lawyers for conduct no more reprehensible than that of this respondent. For example, see the following recent cases: *Cleveland Bar Assn.* v. *Bilinski* (1964), 177 Ohio St., 43; *Cleveland Bar Assn.* v. *Siegel* (1964), 176 Ohio St., 277; *Mahoning County Bar Assn.* v. *Ruffalo* (1964), 176 Ohio St., 263; *Dayton Bar Assn.* v. *Prear* (1964), 175 Ohio St., 543; *Columbus Bar Assn.* v. *Potts* (1963), 175 Ohio St., 101; *Columbus Bar Assn.* v. *Fodor* (1963), 175 Ohio St., 21; *Columbus Bar Assn.* v. *Agee* (1964), 175 Ohio St., 443; *Columbus Bar Assn.* v. *Jurus* (1964), 175 Ohio St., 449; *Columbus Bar Assn.* v. *Margulis* (1963), 174 Ohio St., 263; *Cincinnati Bar Assn.* v. *Smith* (1963), 174 Ohio St., 452.

The court recognizes the seriousness of depriving one of the privilege of practicing law, particularly for a lawyer who has engaged in the practice since 1925 and who holds and has held many important offices. Although the court does not consider action interfering with such a privilege lightly, it is obligated to apply the standards of professional and ethical conduct uniformly, without regard to length of practice or to the positions a respondent may hold in his community. Under the circumstances of this case, the court is unanimously of the opinion that the minimum discipline should be suspension for an indefinite period from the practice of law, and such discipline is, hereby, imposed.

Judgment accordingly.

TAFT, C. J., ZIMMERMAN, MATTHIAS, O'NEILL, GRIFFITH, HERBERT and GIBSON, JJ., concur.

APPENDIX B

Complaint of Relator, Columbus Bar Association, Against Carlton S. Dargusch

* * * * * * *

Now comes the Relator and alleges that Carlton S. Dargusch an Attorney at Law, duly admitted to the practice of law in this State of Ohio is guilty of the following misconduct:

I. That said Carlton S. Dargusch, being an attorney-at-law, became, on or about August 30, 1951, the Trustee of three Trusts, each for the benefit of a major shareholder of the Sunday Creek Coal Company, an Ohio corporation with its principal office located in Columbus, Ohio. The three beneficiaries of said Trusts were and are sisters, being the daughters of the founder of said Company, and together owned approximately 76% of the stock of said Company, all having voting rights. Pursuant to the powers granted to him by said Trusts, the said Carlton S. Dargusch voted said stock at all of the stockholders meetings from October, 1951, until on or about October 21, 1959. During all of said period, the said Carlton S. Dargusch elected all of the members of the Board of Directors of said Company and caused himself to be elected a Director and was the Chairman of the Board of Directors of said Company and the General Counsel for said Company and served as the Trustee of said Trusts. During all of the times herein mentioned the said Carlton S. Dargusch received compensation from the Company as Chairman of the Board of Directors and as General Counsel and also received compensation as Trustee of said Trusts. During said period stated above, as said Trustee, Chairman of the Board of Directors and General Counsel, the said Carlton S. Dargusch committed, caused to be committed, acquiesced in or participated in the following actions:

(1) From time to time, said Carlton S. Dargusch caused said Company to pay his bills for The Columbus Country Club and The Columbus Club, which in-

cluded cash withdrawals, expenses for parties, other personal expenses and similar items, and also bills for the purchase of liquor and other items of a similar nature, in a total amount in excess of $15,900.00, all unrelated to any business activity of said Carlton S. Dargusch on behalf of said Company and all incurred without the knowledge or consent of either the Board of Directors of said Company or the beneficiaries of said Trusts.

(2) Said Carlton S. Dargusch caused said Company to purchase for his exclusive use an automobile, which was replaced periodically, the last one being a Cadillac costing in excess of $13,000 and caused said Company to reimburse him for or to pay all expenses and maintenance charges for said automobiles and certain expenses of automobiles owned by him. On September 8, 1959, he caused the said Board of Directors of said Company to authorize the transfer to him of the title to said Cadillac automobile mentioned above. All of said expenses were unjustified by any reasonable business activity by Carlton S. Dargusch on behalf of said Company and the purchase of said $13,000 Cadillac was accomplished without the knowledge or consent of the beneficiaries of said Trusts.

(3) Said Carlton S. Dargusch promoted and approved the establishment of an insurance retirement program and other similar programs for said Company in which programs he participated and also secured both for himself and his son, an attorney-at-law, long-term employment contracts with an annual retainer of $10,000 when he well knew that the Company was in a critical financial condition, all without the knowledge or consent of the beneficiaries of said Trusts.

(4) Said Carlton S. Dargusch promoted and approved the purchase by said Company of its own stock from certain minority shareholders for a price ranging from $15 to $20 per share, one of which purchases the Court of Common Pleas of Franklin County,

Ohio, has held to be *ultra vires*, and then promoted and approved the resale of said stock so purchased to employees of the Company, including himself, on terms requiring virtually no cash payments, all without the knowledge or consent of the beneficiaries of said Trusts.

(5) Said Carlton S. Dargusch approved the execution of a contract between the Company and the President and Executive Vice-President to sell to said officers the Company's sales subsidiary, the only branch of the business which had been profitable, all without the knowledge and consent of the beneficiaries of said Trusts.

(6) Said Carlton S. Dargusch negotiated a loan of $70,000.00 to the Company from one of said Trusts, of which he was Trustee, requiring the Company to pay a "finders fee" of $2500.00 to said Trust and then he, as Trustee, paid some portion or all of said "finders fee" to himself.

(7) During all the times mentioned above, and while said Carlton S. Dargusch was in complete control of said Company, the financial condition of said Company steadily deteriorated to the point that it finally became virtually insolvent. The shareholders' equity decreased well over a million dollars from December 31, 1952 to May 31, 1959, and the Company suffered substantial operating losses in every year except one during said period. Said Carlton S. Dargusch failed to advise the beneficiaries of said Trusts of this financial condition and persuaded them not to concern themselves with company affairs. He failed to render them any financial statements of the Company. He caused the Company to pay large dividends to the shareholders from capital assets until the liquid assets were virtually exhausted. It was only when the Company ceased paying such dividends that the shareholders—beneficiaries of said Trusts—realized how precarious the financial condition of the Company had become.

(8) During the times herein mentioned, said Carlton S.

Dargusch, as Chairman of the Board of Directors and as General Counsel of said Company drafted the minutes of the meetings of the Board of Directors which were not read to or approved by the Directors and which on occasion contained matters affecting said Carlton S. Dargusch which had not been authorized by the Directors.

(9) Said Carlton S. Dargusch, as Trustee, of one of said Trusts, loaned $30,000.00 of said Trust assets to his son, Carlton S. Dargusch, Jr., who was then associated with him in the practice of law.

That by reason of the foregoing the said Carlton S. Dargusch has committed acts tending to bring the courts and the legal profession into disrepute and has violated Canons 6, 11, 29, 32 and 38 of the Canons of Professional Ethics as adopted by this Court and Rule XXVIII of the Rules of the Supreme Court of Ohio and his Oath of Office as an Attorney-at-Law.

II. That on or about December 27, 1962, the said Carlton S. Dargusch made false and misleading statements to members of the investigating sub-committee of the Professional Ethics Committee of the Columbus Bar Association in connection with said sub-committee's inquiry with regard to the matters set forth in Count I of the complaint herein, thereby violating Canon 22 of the Canons of Professional Ethics as adopted by this Court and in violation of his Oath of Office as an Attorney-at-Law.

JOHN L. DAVIES, JR.,
50 West Broad Street.

SOL MORTON ISAAC,
8 East Broad Street.

JAMES C. JUSTICE,
40 South Third Street.

CERTIFICATE

The undersigned, BRUCE G. LYNN, Chairman of the Grievance Committee, of the Professional Ethics Committee Association hereby certifies that JOHN L. DAVIES, JR., SOL MORTON ISAAC, and JAMES C. JUSTICE, are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated —, 19 —.

—— ——,
Chairman, Professional Ethics Committee,
Columbus Bar Association,
40 South Third Street,
Columbus 15, Ohio.

* * * * * * *

Now comes the Relator and alleges that Carlton S. Dargusch, an Attorney at Law, duly admitted to the practice of law in this State of Ohio is guilty of the following misconduct:

SUPPLEMENTAL CHARGES

The following specifications as supplemental charges are in addition to specifications numbers (1) through (9) of Count I of the original Complaint filed herein and incorporate the entire first and last paragraphs of Count I as if herein again set forth:

(10) At a meeting of the stockholders of Sunday Creek Coal Company held on March 6, 1957, at which Carlton S. Dargusch presided as Chairman and held as Trustee the majority of voting stock, a resolution was adopted which provided in part that ". . . in the event of . . . the decease of any other present or future officer or employee who has been in the service of the company for a minimum period of

twenty years (including military leave) the salary of such deceased officer or employee shall be continued by the payment of such salary to the widow or heirs for a period of twenty-four months following such decease." The minutes of said meeting reflect that Carlton S. Dargusch voted in favor of said Resolution. Said Resolution would have benefited the widow or heirs of said Carlton S. Dargusch. The minutes of a meeting of the Board of Directors of said Company held on May 7, 1957, at which Carlton S. Dargusch presided as Chairman, reflect the adoption of a motion in substantially similar terms.

(11) Said Carlton S. Dargusch, as Trustee of one of said Trusts, loaned from time to time in excess of $200,000.00 of Trust assets to Irvin Stein and Associates, which loans began in 1956. Contemporaneously with the making of the initial loan, said Carlton S. Dargusch accepted retainer fees as attorney for said Irvin Stein and Associates and/or businesses owned and operated by said borrowers, which retainer was continuous during the Trusteeship of Carlton S. Dargusch. On at least one occasion an additional sum of $20,000.00 was similarly loaned from a second Trust of which said Carlton S. Dargusch was Trustee. During all of said time Carlton S. Dargusch, as such Trustee of said Trust, borrowed money for said Trust from The Huntington National Bank of Columbus, Ohio.

(12) Said Carlton S. Dargusch, as Trustee of one of said Trusts, loaned in excess of $100,000.00 of Trust assets to T. Marzetti Company over a period of several years, during all of which time said Carlton S. Dargusch was the attorney for said T. Marzetti Company and related by marriage to one of the officials or employees of said company.

(13) From time to time, said Carlton S. Dargusch caused certain officers of said Company, including Frank G. Smith, President, to turn over to him certain sums

of money which they had obtained from the company as reimbursement for fictitious expenses and which sums said Carlton S. Dargusch told them he would use for political contributions.

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50 West Broad Street,
Columbus 15, Ohio.

SOL MORTON ISAAC,
8 East Broad Street,
Columbus 15, Ohio.

JAMES C. JUSTICE,
40 South Third Street,
Columbus 15, Ohio.

Counsel for Relator.

Filed November 29, 1963, John W. McMillan, Sec'y.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE.

COLUMBUS BAR ASSOCIATION, *Relator*

v.

CARLTON S. DARGUSCH, *Respondent.*

This cause came on to be heard upon the relator's and respondent's replies to the Court's Show Cause Order of September 29, 1964 and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the minimum discipline should be suspension for an indefinite period from the practice of law, and such discipline is, hereby, imposed for the reasons stated in the opinion filed herein.

The Respondent, Carlton S. Dargusch, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he hereby is divested of each, any and all of the rights, privileges and prerogatives customarily accorded to members in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Carlton S. Dargusch, surrender forthwith his certificate of admission to practice to the Clerk of this Court and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, Carlton S. Dargusch, pay the costs of these proceedings taxed in the amount of One Thousand and Forty-Six dollars and thirty-four cents, ($1,046.34.).

It is further ordered that copies of this Entry be certified to the Respondent, to all counsel of record, to the Board of Commissioners on Grievances and Discipline, to the Columbus Bar Association, to the Presiding Judge of the Federal District Court at Columbus, Ohio and to the Presiding Judge of the Court of Common Pleas for Franklin County, Ohio.

APPROVED: KINGSLEY TAFT, CHIEF JUSTICE.

Office-Supreme Court, U.S.
FILED
AUG 16 1965
JOHN F. DAVIS, CLERK

No. [redacted] 151

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

CARLTON S. DARGUSCH,
Petitioner,

vs.

COLUMBUS BAR ASSOCIATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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CARLTON S. DARGUSCH, JR.,
Of Counsel.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1177

CARLTON S. DARGUSCH,

Petitioner,

vs.

COLUMBUS BAR ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE AND ARGUMENT

The sole "Question Presented" in the Petition for a Writ of Certiorari is stated on page 2 of the Petition, as follows:

> "Whether in state disbarment proceedings denial of confrontation by suppression of the identity of the informant and accuser is consistent with the due process of law guaranty of the Fourteenth Amendment to the United States Constitution."

The "Question Presented" is wholly spurious since there was no "informant-accuser" of the petitioner as stated on page 4 of the Petition and, thus, there neither was nor could have been any suppression or denial of confrontation. The respondent and his counsel know that neither The Colum-

bus Bar Association nor any other person or body "repeatedly withheld" any information from them, much less the identity of any "informant-accuser". If there was an "accuser" in the sense indicated by the "Question Presented", it was The Columbus Bar Association who did and still does confront the petitioner with charges of unethical conduct. All of this is absolutely clear from the record.

These disciplinary proceedings were commenced by the filing of a complaint by The Columbus Bar Association with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with Rule XXVII (Now Rule XVIII, being the same as former Rule XXVII as amended March 11, 1964), paragraph 8, of the Rules of the Supreme Court of Ohio. (A copy of Rule XVIII of the Supreme Court of Ohio is attached hereto as Appendix A.)

Prior to the filing of the complaint, The Columbus Bar Association followed its procedure established to comply with paragraph 8 of said Rule XVIII. This procedure requires that the Columbus Bar Association's Committee on Professional Ethics make a thorough investigation of the professional conduct of any lawyer whose questionable conduct has come to the attention of that committee. If that committee determines after such investigation that the lawyer thus investigated has been guilty of unethical conduct, it makes its recommendations for the filing of a complaint to the Board of Governors of the Columbus Bar Association. The Board of Governors thoroughly reviews the findings of the Committee on Professional Ethics and if it approves the recommendations, a complaint is then filed with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with said Rule XVIII.

A lawyer's professional conduct may be brought to the attention of the Columbus Bar Association's Committee on Professional Ethics in several ways: (1) by direct complaint of an alleged injured party, (2) by reference from a fellow lawyer, (3) by such general knowledge in the community as to arouse the interest of the organized bar or (4) by referral from the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in accordance with paragraph 3 of said Rule XVIII.

In the instant case, during the summer of 1962, the then chairman of the Board of Commissioners on Grievances of the Supreme Court of Ohio, Mr. George A. Schwer, of Springfield, Ohio, directed Mr. John McMillan, the then Administrative Assistant of the Supreme Court of Ohio, to inquire whether the Columbus Bar Association had ever investigated the activities of Mr. Carlton S. Dargusch in connection with The Sunday Creek Coal Company. Mr. McMillan referred the matter to The Columbus Bar Association.

The Columbus Bar Association employs Mr. James C. Justice, an attorney, to make preliminary investigations of all disciplinary matters coming to the attention of the Association. Mr. Justice made such a routine investigation of Mr. Dargusch's activities. He reported his preliminary findings to the Committee on Professional Ethics in September, 1962. The Committee, considering that a more detailed investigation was indicated, appointed Mr. Sol Morton Isaac and Mr. G. Jack Crites, two of its members, and Mr. Justice as the investigating sub-committee. This sub-committee conducted intensive investigations over a period of six to eight months. Following a detailed report of that sub-committee, the Committee on Professional Ethics recommended to the Board of Governors of the

Association that a complaint be filed against Mr. Dargusch for unethical conduct. The Board of Governors considered the recommendations over a period of several months and then approved it. Mr. Isaac, Mr. Justice and Mr. John L. Davies, Jr., were appointed as a committee to prepare the complaint and to represent the Association in the hearing on the complaint. The complaint was prepared, was specifically approved by the Board of Governors and was duly filed.

After a complaint is filed with the Board of Commissioners on Grievances and Discipline, the chairman of that Board is obliged to appoint a panel of three members of that Board, none of whom reside in the respondent's county of residence, to hear the matter. In this instance the chairman appointed Mr. Glenn W. Vogelgesang, chairman of the panel, of Canton, Ohio; Mr. Aronhold C. Schapiro of Portsmouth, Ohio and Mr. Karl H. Weaner, of Defiance, Ohio; and the matter was duly assigned for hearing in December, 1963.

The respondent, Mr. Dargusch, was represented before, during and after the hearing by Mr. Richard C. Addison, Mr. John J. Chester, Jr., and Mr. Carlton S. Dargusch, Jr., all practicing attorneys in Columbus, Ohio. The entire record of the hearing consists of 672 pages and there were 101 exhibits.

The first reference to an accuser, if any, of Mr. Dargusch arose during the hearing in a question put to a witness by Mr. Weaner, one of the panel members. The witness, Mrs. Sexton, vigorously denied that she had accused Mr. Dargusch of anything to anyone. The entire discussion begins on page 265 of the Record and continues to page 283, when Mr. Isaac, on behalf of the Columbus Bar Association made a professional statement as to how the matter had

come to the attention of the Association, beginning on page 282 of the Record, as follows:

"MR. ISAAC: If the panel please, last evening before we adjourned, the panel asked Mrs. Sexton about how this matter arose, whether she was involved in bringing this matter to the Columbus Bar Association. I then made a statement which was not complete, and I believe that for the purpose of the record, if the panel will permit me, I should tell the panel how this matter came to the Columbus Bar Association, so that there is no inconsistency in the record and it is clear.

"I said that the Columbus Bar Association got information on this in about August of 1962. Actually, it was reported to the Professional Ethics Committee of the Columbus Bar Association, I think, in September at its meeting after the summer recess.

"Mr. Justice, who is the employee of the Columbus Bar Association charged with the investigation of unethical matters, reported to the Committee that he had received a call from John McMillen who was then the Administrative assistant in the Supreme Court and Secretary of this Commitee on grievances, to the effect that Mr. McMillen had received a letter from Mr. Schwer, I don't know his [first] name, but he is a lawyer in Springfield, Ohio, and Chairman of the Committee on Grievances. Mr. Schwer had asked whether the Columbus Bar Association had ever had brought to its attention some matters involving Mr. Dargusch and a coal company, and several women who were connected with the coal company, and as we understand it, the letter also said that Mr. Schwer believed that Mr. William Sommer (sic) had represented one or the other of these women in the coal company and would know the facts before them.

"As he is charged to do, Mr. Justice made a preliminary investigation, finding out that at that time, there was pending in the Common Pleas Court of Franklin County one or two cases involving these stock purchase agreements which had been made by the Sunday Creek Coal Company with some of the stockholders, and then in September, he reported to the Committee on Pro-

fessional Ethics his preliminary findings, and it was the opinion of the Professional Ethics Commitee that a subcommittee be appointed to investigate the matter further, and Mr. Crites and Mr. Justice and I were appointed to that subcommittee. We began our investigation, and I think possibly the first matter we took up then, was the conference we had with Mr. Dargusch and Mr. Saxbe which is shown in an exhibit.''

The Record is clear that during all of this conversation between members of the panel, the witness and the attorneys for the Bar Association, Mr. Dargusch and his counsel remained silent. They made no demand and raised no issue.

The next references in the Record of the hearing to an accuser of Mr. Dargusch are the statements made by Mr. Addison, counsel for Mr. Dargusch, and Chairman Vogelgesang which are quoted on pages 12 and 13 of the Petition for a Writ of Certiorari herein. The references are complete. There were no further statements made at the hearing. If counsel for Mr. Dargusch followed the suggestion of Mr. Vogelgesang to request further information from the Board of Grievances and Discipline, they did not report back to the panel or to counsel for The Columbus Bar Association.

The respective parties to the hearing filed briefs with the hearing panel. In the brief on behalf of Mr. Dargusch, at page 75, appears the only reference to an accusation, as follows:

> ''*We would agree that the relator, Columbus Bar Association, has the right to question the conduct of the Respondent, as a matter of procedure, over the protest of all those directly affected by the alleged unethical conduct, and despite the fact that those affected did not consider the conduct to involve any conflict of interest so far as they were concerned.* But in such a

> circumstance they must produce facts and witnesses to support their case." (Emphasis added)

It is submitted that this statement by counsel for Mr. Dargusch is an accurate description of the situation in this case and a complete answer to the "Question Presented" by the Petition for a Writ of Certiorari.

In accordance with the rules of the Supreme Court of Ohio, the hearing panel made its findings of fact and conclusions of law, finding Mr. Dargusch guilty of unethical conduct. These findings were reviewed and approved by the Board of Commissioners on Grievances and Discipline and referred to the Supreme Court of Ohio with a recommendation that there be a public reprimand of Mr. Dargusch. *The issue of confrontation of an accuser is not mentioned in the findings of fact and conclusions of law of the hearing panel because Mr. Dargusch agreed that there was no such issue.*

The Ohio Supreme Court issued an order to show cause why the findings of fact of the Board of Commissioners on Grievances and Discipline should not be adopted as findings by the Court, and if they were, whether Mr. Dargusch should be given a public reprimand, suspended for an indefinite period from the practice of law or permanently disbarred. In his response to that order Mr. Dargusch for the first time formally raised this issue of accusation. He said, on page 1:

> "In 1962 a complaint was filed against Respondent. To this day the Columbus Bar Association has not disclosed the complainant's name and thus Respondent has been denied the chance to subject his accuser to cross-examination. To say the least due process requires this."

On page 24 of his response, Mr. Dargusch summarized, as follows:

> "(1) The beneficiaries of the trust involved state they have no complaint. The complaint was filed by a person whose identity the Columbus Bar Association refuses to disclose and therefore Respondent has been denied his constitutional right to cross-examine his accuser."

This is a patently false and misleading statement, contradictory to the other statement made on behalf of Mr. Dargusch and quoted above. The Record refutes completely these conclusions. They have no foundation in fact.

Once again, counsel for the Columbus Bar Association make their professional statement to this Court, as they did to the hearing panel and to the Supreme Court of Ohio. *There was no "accuser" of Mr. Dargusch to the Columbus Bar Association.* There was an inquiry by Mr. Schwer, chairman of the Board of Commissioners on Grievances and Discipline. There was no refusal to reveal or denial of confrontation of an accuser because there was no accuser.

Mr. Dargusch was found guilty of unethical conduct by the committee on Professional Ethics of the Columbus Bar Association, by the Board of Governors of the Columbus Bar Association, by the hearing panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, by the entire Board and by the Supreme Court of Ohio, who saw fit to increase the recommended penalty from a public reprimand to an indefinite suspension of the right to practice law. This decision was made because Mr. Dargusch was found to have committed acts which violated the canons of ethics of the American Bar Association, as approved and adopted by the Supreme Court of Ohio. His accuser was the Columbus Bar Association whom he

faced in a full and exhaustive hearing, both before the panel and the Supreme Court of Ohio.

There is no reason to analyze the law presented by the petitioner in support of his Petition for a Writ of Certiorari. The sole "Question Presented" is not an issue under the indisputable facts of this case.

The Columbus Bar Association respectfully submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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JAMES C. JUSTICE,
40 South Third Street, Columbus, Ohio 43215,
Attorneys for Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two (2) copies of the foregoing brief have been mailed by air mail with postage pre-paid to attorneys for Petitioner, Joseph L. Rauh, Jr., and John Sillard, respectively at their offices located at 1625 K Street, NW, Washington 6, D.C.

The undersigned further certifies that two (2) copies of the foregoing brief were mailed to Carlton S. Dargusch, Jr., Of Counsel for Petitioner, at his office at 218 East State Street, Columbus, Ohio.

Sol Morton Isaac

SOL MORTON ISAAC,
Of Counsel for Respondent.

APPENDIX

RULE XVIII.[2]

DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

(1) **Creation of Board of Commissioners on Grievances and Discipline.** There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. One member of such Board shall be appointed from each of the following districts: *District 1,* comprising Butler, Clermont, Clinton, Hamilton and Warren Counties. *District 2,* comprising Darke, Miami, Montgomery, Preble and Shelby Counties. *District 3,* comprising Defiance, Fulton, Hancock, Henry, Paulding, Putnam, Van Wert, Williams and Wood Counties. *District 4,* comprising Lucas County. *District 5,* comprising Crawford, Marion, Morrow, Ottawa, Sandusky, Seneca and Wyandot Counties. *District 6,* comprising Champaign, Clark, Fayette, Greene, Logan, Madison and Union Counties. *District 7,* comprising Delaware, Franklin and Pickaway Counties. *District 8,* comprising Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pike, Ross, Scioto and Vinton Counties. *District 9,* comprising Coshocton, Fairfield, Knox, Licking, Musking-

[2]Same as former Rule XXVII as amended March 11, 1964.

um and Perry Counties. *District 10,* comprising Ashland, Erie, Holmes, Huron, Lorain, Medina, Richland and Wayne Counties. *District 11,* comprising Portage and Summit Counties. *District 12,* comprising Cuyahoga County. *District 13,* comprising Ashtabula, Columbiana, Geauga, Lake, Mahoning and Trumbull Counties. *District 14,* comprising Carroll, Stark and Tuscarawas Counties. *District 15,* comprising Belmont, Guernsey, Harrison, Jefferson and Monroe Counties. *District 16,* comprising Allen, Auglaize, Hardin and Mercer Counties. *District 17,* comprising Athens, Hocking, Meigs, Morgan, Noble and Washington Counties. The term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment. Provided, however, that any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners, and designate a Secretary, each of whom shall have authority to execute journal entries on behalf of the Board of Commissioners and of panels thereof.

(2) **Jurisdiction of Board.** The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, make findings and submit recommendations to this Court, as hereinafter provided.

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law or judge, or

(b) Concerning the mental illness of any attorney and counselor of law or judge, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this State.

(3) **Referral for Investigation.** The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association any matters coming to its attenction for investigation, as hereinafter provided.

(4) Application of Rule; Authority and Duty of Local Committees. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges, all proceedings for the discipline of such attorneys and counselors at law and judges and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule, and any committee of any regularly organized bar association or of the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct or mental illness is found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Pro-

fessional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

(5) **Definitions.**

(a) **Misconduct.** Misconduct shall mean any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, or the commission or conviction of a crime involving moral turpitude.

(b) **Mental Illness.** Mental illness shall mean the condition defined in Section 5122.01 (A), Revised Code.

(6) **Manner of Discipline.** Each attorney and counselor at law or judge found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) a public reprimand, or

(d) a private reprimand.

(7) **Effect of Discipline.** A person disbarred shall never thereafter be readmitted to the practice of law in this State. A person who shall have voluntarily surrendered his license

to practice and thereafter has been reinstated in the manner hereinafter provided and a person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(8) **The Complaint; Where Filed; By Whom Signed.** A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Such complaint shall not be accepted for filing unless it is signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed either by the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association or by the President, Secretary, or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall Constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by the order of the Supreme

Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

(9) **Duty of the Board Upon Filing of the Complaint.**

(a) **Notice to Respondent.** The Secretary of the Board of Commissioners shall send a copy of the complaint by registered mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint.

(b) **Suspension of Right to Practice Pending Disposition of Misconduct Complaint.** After an answer has been filed or the time for answer has elapsed, the Court shall entertain such recommendation as the Board may make for the immediate suspension from the practice of law pending disposition of the complaint if the complaint alleges the conviction of a crime involving moral turpitude supported by a certified copy of the judgment entry of the Court convicting the Respondent.

(c) **Mental Illness Suspension.** After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination as provided in (d) hereof, the Board shall forthwith certify the complaint to this Court and the Court may suspend the Respondent from the practice of law.

(d) **Examination.** If the complaint or answer alleges existing mental illness unsupported by a journal entry of a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own

motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

(e) **Termination.** Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for suspension, which is certified by the Board to, and affirmed by, the Court.

(10) **Hearing by Panel of Three Commissioners.** After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(11) **Dismissal of Complaint.** If the panel finds that the complaint or evidence is insufficient, the panel shall make its certified report of the proceedings and recommendations to the Board of Commissioners which shall review the proceedings, and shall dismiss the complaint, or refer the matter back to the panel for further hearing or the administering of a private reprimand, or may proceed upon the

certified report of the proceedings before the panel. The Secretary of the Board of Commissioners shall give notice of a dismissal to the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county or counties in which the Respondent resides and maintains his office, and of the county or counties from which the complaint arose.

If a written request for a conference with the Supreme Court of Ohio is made by the relator within twenty (20) days after the issuance of such notice, relator, respondent and a member of the hearing panel will be called to confer with the Court.

(12) **Private Reprimand; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand and such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by such panel.

If a written request for a conference with the Supreme Court of Ohio is made by the relator within twenty (20) days after the issuance of such notice, relator, respondent and a member of the hearing panel will be called to confer with the Court.

(13) **Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel.** If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same;

together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(14) **Review by Entire Board of Commissioners; Board to Administer Private Reprimand.** Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(15) **Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review.** If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and

shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(16) **Show Cause Order Issued by the Court to Respondent.** On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

(17) **Response to Order to Show Cause and Objections.** The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

(18) **Answer Briefs.** Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

(19) **Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order.** After hearing

on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent (at his last known address), to the Ohio State Bar Association, to the local bar association or associations in the county or counties in which the Respondent resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio; the United States Court of Appeals for the Sixth Circuit; and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

If a disciplinary order of the Court provides for a permanent disbarment or suspension for an indefinite period from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

(20) **Proceedings Private; Exceptions.** All proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private except

(a) Where the respondent shall request in writing that they be public, or

(b) Where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or

(c) Where any disciplinary matter is heard by the Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

(21) **Petition for Reinstatement.** No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed with this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period the Petitioner from the practice of law in this State, or within a period of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

(22) **Contents of Petition for Reinstatement.** Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when indefinite suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates of all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under the Rule, to receive from the Clerk of Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

(23) **Costs to Be Deposited with Petition for Reinstatement.** Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(24) **Requisites for Reinstatement.** No person shall be reinstated unless he has established by clear and convincing evidence that he possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such case the order of reinstatement may

be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Section 6 of Rule XVII shall not apply to any petitioner with respect to whom such an order of reinstatement may have been issued.

(25) **Petition for Reinstatement Referred to Board of Commissioners.** Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

(26) **Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court from Denial of Petition by Board of Commissioners.** The Chairman of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section (22) (c). Such hearing shall be public. Any interested person, any member of the Bar, and any representative of any local bar association or of the Ohio State Bar Association may appear before the hearing panel in support of or in opposition to the petition.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition any person or organization referred to in Section (22) (c) shall have ten (10) days from the receipt of notice of filing of such report to file objections to the recommendations and brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

(27) **Manner of Service of Notices, etc.** Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by registered mail.

(28) **Quorum of Panel or Board.** A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(29) **Clerk Is Agent for Service of Notices on Nonresident Attorney.** Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law or judge, pursuant to this Rule.

(30) **Manner of Service on Clerk; Record of Such Service not a Public Record.** All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by registered mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the service upon said Clerk of this Court, addressed to such Respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any

proceeding in which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of the service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(31) **Power to Issue Subpoenas.** In investigations and proceedings under this rule, upon application by the Chairman, Vice Chairman, Secretary, or Counsel of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a certificate under Section (8) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, or any sub-committee thereof, or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be issued in the name and under the seal of this Court and shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(32) **May Order Depositions.** The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil

actions, and such depositions may be used to the same extent as permitted in civil actions.

(33) **Effect of Refusal to Testify.** The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

(34) **Rules of Evidence.** All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

(35) **Docket of Complaints.** The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(36) **Board May Prescribe Rules.** The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(37) **Rules to Be Liberally Construed.** The process and procedure under this Rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This Rule and such regulations relating to investigations and proceedings involving com-

plaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the Courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this Rule. To the extent that application of this amended Rule to such pending proceedings may not be practicable, the rules and regulations in force at the time of this amended Rule became effective, shall continue to apply.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

CARLTON S. DARGUSCH, *Petitioner,*

v.

COLUMBUS BAR ASSOCIATION, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

REPLY MEMORANDUM FOR PETITIONER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 1177

CARLTON S. DARGUSCH, *Petitioner,*

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COLUMBUS BAR ASSOCIATION, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

REPLY MEMORANDUM FOR PETITIONER

The Brief in Opposition augments rather than justifies the deviation in this case from constitutional norms of fair procedure in disbarment proceedings. It is bad enough that Respondent failed in the court below to offer any explanation or justification for its refusal to disclose the identity of the informant whose accusation initiated these disbarment investigations and proceedings. But in this Court that refusal is compounded by Respondent's statement that "There was no 'accuser' of Mr. Dargusch to the Columbus Bar Association" (Opposition, p. 8) and by Respondent's suggestion that the proceeding resulting in the suspension of an attorney after forty years of practice was born in an idle and spontaneous conjecture

by Chairman Schwer of the Ohio Board of Commissioners on Grievances and Discipline.[1]

(i) With remarkable lack of candor, Respondent continues to withhold the identity of Petitioner's informant-accuser. Respondent repeats its earlier assertion that Chairman Schwer of the state's Board of Commissioners on Grievances and Discipline, an attorney in Springfield, Ohio, had transmitted the accusation against Mr. Dargusch to the Columbus Bar Association. But certainly Mr. Schwer, who was unacquainted with Petitioner, did not wake up one morning from a dream in which he was counseled to accuse a Columbus attorney of misconduct. Breach of ethics accusations do not emerge spontaneously in the minds of state officials, and it is the informant who made the accusations *to* Chairman Schwer whose identity Respondent still insists on suppressing.

(ii) The sole response to the grounds urged for this Court's review is that "There was no 'accuser' of Mr. Dargusch" because "his accuser was the Columbus Bar Association . . ." (Opposition, p. 8). But the issue of confrontation uniformly arises in criminal or disciplinary proceedings wherein a public agency is the nominal accuser. In the numerous confrontation cases recently before this Court (see Petition, p. 16), there were involved public

[1] Respondent concedes (Opposition, p. 7) that the constitutional issue of confrontation was duly placed by Petitioner before the Supreme Court of Ohio prior to its disciplinary action. That the question had not previously been briefed before the Board of Commissioners is of no consequence. At Petitioner's hearing before the Board he had expressly demanded confrontation (see Petition, p. 12). And the Board was in any event not competent to rule on the constitutional challenge to its failure to require confrontation; in Ohio a constitutional challenge "is a question for the courts and not for a board or commission" (*East Ohio Gas Co.* v. *Public Utilities Commission,* 137 Ohio St. 225; 28 N.E. 2d 599) and an administrative body is "without jurisdiction to consider and determine a question of constitutional validity" (*S.S. Kresge Co.* v. *Bowers,* 170 Ohio St. 405; 166 N.E. 2d 139).

accusing agencies. Thus the question is not whether the accused knows the identity of the charging and prosecuting agency—it is whether *that* agency may suppress the identity of the individual accuser.

(iii) As emphasized in the Petition (pp. 15, 18), the hearing resulting in Petitioner's disbarment departed in numerous respects from established norms of fair notice and procedure, compounding the arbitrary and unjustified suppression of the identity of the informant-accuser. To the compelling grounds thus presented for this Court's review, there is now added Respondent's effort to mislead this Court by the suggestion that an honored member of the profession has been put to inquisition and trial on an idle conjecture by the Chairman of the Board of Commissioners on Grievances and Discipline, without anyone having accused him in the first instance of misconduct. This improbable suggestion, tendered at the eleventh hour in attempted justification of the refusal to afford confrontation in the state proceedings, merely adds to the necessity for orderly disclosure, consistent with due process, of the identity of Petitioner's informant-accuser. What is at stake now in addition to the integrity of the disbarment proceedings is the integrity of the judicial process.

Respectfully submitted,

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